

§ 2902.5 Item designation.

(a) *Procedure.* Designated items are listed in subpart B. In designating items, USDA will designate items composed of generic groupings of specific products and will identify the minimum biobased content for each listed item. As items are designated for procurement preference, they will be added to subpart B. Items are generic groupings of specific products. Products are specific products offered for sale by a manufacturer or vendor. Although manufacturers and vendors may submit recommendations to USDA for future item designations at any time, USDA does not have a formal process for such submissions or for responding to such submissions.

(b) *Considerations.* In designating items, USDA will consider the availability of such items and the economic and technological feasibility of using such items, including life cycle costs. USDA will gather information on individual products within an item and extrapolate that product information to the item level for consideration in designating items. In considering these factors, USDA will use life cycle cost information only from tests using the BEES analytical method.

(c) *Exclusions.* (1) Motor vehicle fuels and electricity are excluded by statute from this program.

(2) USDA additionally will not designate items for preferred procurement that are determined to have mature markets. USDA will determine mature market status by whether the item had significant national market penetration in 1972.

§ 2902.6 Providing product information to Federal agencies.

(a) *Informational Web site.* An informational USDA Web site implementing section 9002 can be found at: <http://www.biobased.oce.usda.gov>. USDA will maintain a voluntary Web-based information site for manufacturers and vendors of designated items produced with biobased products and Federal agencies to exchange product information. This Web site will provide information as to the availability, relative price, biobased content, performance and environmental and public health benefits of the designated items. USDA encour-

ages manufacturers and vendors to provide product, business contacts, and product information for designated items. Instructions for posting information are found on the Web site itself. USDA also encourages Federal agencies to utilize this Web site to obtain current information on designated items, contact information on manufacturers and vendors, and access to information on product characteristics relevant to procurement decisions. In addition to any information provided on the Web site, manufacturers and vendors are expected to provide relevant information to Federal agencies, upon request, with respect to product characteristics, including verification of such characteristics if requested.

(b) *Advertising, labeling and marketing claims.* Manufacturers and vendors are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to the Federal Trade Commission Guides for the Use of Environmental Marketing Claims, 16 CFR part 260.

§ 2902.7 Determining biobased content.

(a) *Certification requirements.* For any product offered for preferred procurement, manufacturers and vendors must certify that the product meets the biobased content requirements for the designated item within which the product falls. Paragraph (c) of this section addresses how to determine biobased content. Upon request, manufacturers and vendors must provide USDA and Federal agencies information to verify biobased content for products certified to qualify for preferred procurement.

(b) *Minimum biobased content.* Unless specified otherwise in the designation of a particular item, the minimum biobased content requirements in a specific item designation refer to the biobased portion of the product, and not the entire product.

(c) *Determining biobased content.* Verification of biobased content must be based on third party ASTM/ISO compliant test facility testing using the ASTM International Radioisotope Standard Method D 6866. ASTM International Radioisotope Standard Method D 6866 determines biobased content

based on the amount of biobased carbon in the material or product as percent of the weight (mass) of the total organic carbon in the material or product.

(d) *Products with the same formulation.* In the case of products that are essentially the same formulation, but marketed under a variety of brand names, biobased content test data need not be brand-name specific.

§ 2902.8 Determining life cycle costs, environmental and health benefits, and performance.

(a) *Providing information on life cycle costs and environmental and health benefits.* When requested by Federal agencies, manufacturers and vendors must provide information on life cycle costs and environmental and health benefits based on tests using either of two analytical approaches: The BEES analytical tool along with the qualifications of the independent testing entity that performed the tests; or either a third-party or an in-house conducted analysis using the ASTM standard for evaluating and reporting on environmental performance of biobased products D7075. Both BEES and the ASTM standard are in accordance with ISO standards, are focused on testing of biobased products, and will provide the life cycle assessment and life cycle cost information Federal agencies might require. As with biobased content, test data using the above analytical methods need not be brand-name specific.

(b) *Performance test information.* In assessing performance of qualifying biobased products, USDA requires that Federal agencies rely on results of performance tests using applicable ASTM, ISO, Federal or military specifications, or other similarly authoritative industry test standards. Such testing must be conducted by an ASTM/ISO compliant laboratory. The procuring official will decide whether performance data must be brand-name specific in the case of products that are essentially of the same formulation.

§ 2902.9 Funding for testing.

(a) *USDA use of funds for biobased content and BEES testing.* USDA will use funds to support testing for biobased content and conduct of BEES testing

for products within items USDA has selected to designate for preferred procurement through early regulatory action. USDA initially will focus on gathering the necessary test information on a sufficient number of products within an item (generic grouping of products) to support regulations to be promulgated to designate an item or items for preferred procurement under this program. USDA may accept cost sharing for such testing to the extent consistent with USDA product testing decisions. During this period USDA will not consider cost sharing in deciding what products to test. When USDA has concluded that a critical mass of items have been designated, USDA will exercise its discretion, in accordance with the competitive procedures outlined in paragraph (b) of this section, to allocate a portion of the available USDA testing funds to give priority to testing of products for which private sector firms provide cost sharing for the testing.

(b) *Competitive program for cost sharing for determining life cycle costs, environmental and health benefits, and performance.* (1) Subject to the availability of funds and paragraph (a) of this section, USDA will announce annually the solicitation of proposals for cost sharing for life cycle costs, environmental and health benefits, and performance testing of biobased products in accordance with the standards set forth in § 2902.8 to carry out this program. Information regarding the submission of proposals for cost sharing also will be posted on the USDA informational Web site, <http://www.biobased.oce.usda.gov>.

(2) Proposals will be evaluated and assigned a priority rating. Priority ratings will be based on the following criteria:

(i) A maximum of 25 points will be awarded a proposal based on the market readiness;

(ii) A maximum of 20 points will be awarded a proposal based on the potential size of the market for that product in Federal agencies;

(iii) A maximum of 25 points will be awarded based on the financial need for assistance of the manufacturer or vendor;